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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. ERIC BLACK, Defendant and Appellant.	A154237 (Humboldt County Super. Ct. Nos. CR1700669, CR1704676)

In November 2014, the voters of California approved Proposition 47, which reduced certain theft crimes to misdemeanors where the value of the property taken was $950 or less. Two-and-one-half years later, defendant Eric Black pleaded guilty to felony receiving a stolen vehicle and was placed on three years' probation. After violating his probation by committing a first degree residential burglary, he was sentenced to prison. For the first time, he now contends his receiving a stolen vehicle charge should be reduced to a misdemeanor in accordance with Proposition 47. Defendant forfeited this claim by failing to raise it at any point below, and we thus affirm.

BACKGROUND

Case No. CR1700669

An information filed March 29, 2017 charged defendant with one count of felony receiving stolen property, a motor vehicle (Pen. Code, § 496d, subd. (a)), and one count of misdemeanor possession of burglary tools (§ 466).[1]

[1] All statutory references are to the Penal Code.

On May 15, pursuant to a negotiated disposition, defendant pleaded guilty to felony receiving stolen property, and the possession of burglary tools charge was dismissed. Defendant was placed on probation for three years.

On July 13, the probation department filed a petition to revoke defendant's probation on the ground that he twice failed to report to his probation officer as directed. Two amended petitions followed, one adding an allegation that defendant possessed stolen property, the other adding an allegation that he committed a first degree residential burglary.

On March 23, 2018, defendant admitted he had violated the terms of his probation.

Case No. CR1704676

On February 2, 2018, an information charged defendant with first degree residential burglary. (§§ 459, 460.) An amended information added a special allegation that he was on felony probation when he committed the offense.

On March 23, defendant pleaded guilty to the burglary charge, and the special allegation was stricken.

Sentencing

On April 24, defendant was sentenced in both cases. In case no. CR1704676, the court sentenced him to the aggravated term of six years in state prison. In case no. CR1700669, it revoked his probation and imposed an eight-month consecutive sentence.

Defendant filed a timely notice of appeal in both cases.

DISCUSSION

On November 4, 2014, the voters of California approved Proposition 47 (the "Safe Neighborhoods and Schools Act"), which "reduced the punishment for certain theft- and drug-related offenses, making them punishable as misdemeanors rather than felonies. To that end, Proposition 47 amended or added several statutory provisions, including new Penal Code section 490.2, which provides that 'obtaining any property by theft' is petty theft and is to be punished as a misdemeanor if the value of the property taken is $950 or less. (*Id.*, subd. (a).)" (*People v. Page* (2017) 3 Cal.5th 1175, 1179.)

Defendant, who, as noted, pleaded guilty to felony receiving a stolen vehicle, contends that, pursuant to Proposition 47, receiving a stolen vehicle is a misdemeanor when the value of the vehicle is $950 or less. Accordingly, he asks that we do one of three things: reduce his conviction to a misdemeanor; hold the case in abeyance pending a decision in *People v. Orozco* (2018) 24 Cal.App.5th 667, review granted Aug. 15, 2018, S249495, in which the Supreme Court is considering whether receiving a stolen vehicle falls within the scope of Proposition 47; or remand the case to the trial court with instructions to conduct a hearing to determine the value of the stolen vehicle in this case.

The People contend defendant's claim is not reviewable on appeal because he failed to obtain a certificate of probable cause and he forfeited the issue by failing to raise it in the trial court. They also contend defendant's position lacks merit. We agree defendant forfeited this challenge, and we do not address the lack of a certificate of probable cause or the merits of the claim.

Proposition 47 became effective November 5, 2014. On May 15, 2017—two-and-one-half years later—defendant pleaded guilty to felony receiving a stolen vehicle. At no time during the proceeding below did he assert that the offense should be a misdemeanor—not when he was charged, not when he pleaded guilty, not when he was placed on probation, not when he violated that probation and was sentenced to an eight-month term on that offense. Defendant cannot raise this theory here for the first time. (See, e.g., *People v. Gonzales and Soliz* (2011) 52 Cal.4th 254, 306, 307, 314, 318, 322, 332 [defendant forfeited multiple arguments on appeal by failing to raise them below].)

In attempting to rescue his claim, defendant argues in his reply brief that "[t]his case is controlled by *Harris*" *v. Superior Court* (2016) 1 Cal.5th 984. The case has no applicability here. There, in February 2013, defendant was charged with one count of robbery. Two months later, he pleaded guilty to grand theft from the person in exchange for a six-year prison sentence, and the court sentenced him in accordance with the plea agreement. After Proposition 47 was enacted in November 2014, defendant petitioned the trial court to reclassify his grand theft conviction as a misdemeanor and resentence him as a misdemeanant. The People moved to withdraw from the plea agreement, and

the trial court granted the motion. (*Id.* at pp. 987–988.) The Supreme Court reversed, holding that "the People are not entitled to set aside the plea agreement when defendant seeks to have his sentence recalled under Proposition 47." (*Id.* at p. 993.)

From the foregoing, defendant extrapolates that "Harris's request for re-sentencing was not an attack on the validity of his guilty plea and no certificate of probable cause to appeal was necessary," and that for the same reasons he "was not required to obtain a certificate of probable cause to raise his Proposition 47 claim on appeal." While this may address the certificate of probable cause issue, it has nothing to do with whether he preserved his argument for appeal. On this point, *Harris* is of no assistance since the guilty plea there occurred *prior* to the passage of Proposition 47, such that there was no possibility of forfeiture. Indeed, all of the cases defendant cites involved situations in which the defendants entered guilty pleas and/or had been sentenced *before* the passage of Proposition 47. (See, e.g., *People v. Page, supra,* 3 Cal.5th at p. 1180; *People v. Romanowski* (2017) 2 Cal.5th 903, 906; *People v. Orozco, supra*, 24 Cal.App.5th at pp. 670–671; *People v. Williams* (2018) 23 Cal.App.5th 641, 644–645.) Proposition 47 expressly contemplated resentencing under those circumstances. (See § 1170.18, subd. (a) ["A person who, on November 5, 2014, was serving a sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under the act that added this section ('this act') had this act been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of conviction . . . "].) Not so here where, for reasons not evident from the record, defendant simply did not assert the argument below.

DISPOSITION

The judgment of conviction is affirmed.

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Richman, J.

We concur:

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Kline, P. J.

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Stewart, J.

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